IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

CMA.No. 317 of 1998()

AGAINST THE ORDER DATED 10/11/1998 IN IA 2773/98 IN
OS.314/1994 of I ADDL.SUB COURT, THRISSUR

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APPELLANT/RESPONDENT NO.3/DECENDANT NO.1:

KIZHAKKARAPEEDIKAYIL AVARAN, S/O.AHAMMEDKUTTY,
MANAGER AND MUTHAVALLY OF KALIYARODE JARAM
AND MOZQUE, CHERUTHURUTHI

BY ADV. SRI.N.SUKUMARAN
SRI.T.G.LELLULAL
SRI.S.SHYAM
SRI.BOBBY MATHEW

RESPONDENTS/RESPONDENTS 1 AND 2, PETITIONERS 1 AND 2/
PLAINTIFFS 3 AND 4, RESPONDENTS 3 AND 4,
RESPONDENTS 1 AND 2/PLAINTIFFS 1 AND 2:
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1. V.ABDULKHADER, S/O.MIYAN RAWTHER, KUNDIL HOUSE,
P.O.KALIYAR ROAD, THRISSUR DISTRICT.

2. V.K.HAMZA, S/O.KOYAKUTTY, VATTAPARAMBIL HOUSE,
-DO- -DO-

3. VATTAPARAMBIL HAMSA, S/O.MOIDEENKUTTY,
ELANAD VILLAGE, TALAPPILLY TALUK, INDIVIDUALLY AND
REPRESENTING THE GENERAL BODY MEMBERS OF KALIYAR
ROAD PALLY AND JARAM COMMITTEE

4. CHEEPARAVALAPPIL SULAIMAN, S/O.SAIDAVA, PANGARAPPILLY
VILLAGE, THALAPPILLY TALUK, INDIVIDUALLY AND
REPRESENTING THE GENERAL BODY MEMBERS OF
KALIYAR ROAD PALLI AND JARAM COMMITTEE

5. V.S.KASIM, S/O.SAIDALI, PRESIDENT,
KALIYAR ROAD PALLY AND JARAM COMMITTEE,
P.O. PANGARAPPALLI

6. T.S.MANI ALIAS MOHAMMEDKUTTY, SECRETARY,
KALIYAR ROAD PALLI AND JARAM COMMITTEE, DO.

7. ANUDEEN ALIAS SAINUDHEEN, S/O.VATTAPARAMBIL
KOYAKUTTY, PANGARAPPALLY VILLAGE

8. HANEEFA MUSALIYAR, S/O.THATHUKUTTY NAN RAWTHER,
PANGARAPPALLY, THALAPPILLY

BY ADV. SMT.PREETHY KARUNAKARAN
SRI.C.RAMAN
SRI.G.SUBRAMANIAN
SRI.ESM.KABEER
SRI.P.K.MOHAMMED PUZHAKKARA
SMT.M.R.MINI
SMT.AYSHA YOUSEFF
SRI.S.MOHAMMED AL RAFI

THIS CIVIL MISC. APPEAL HAVING BEEN FINALLY HEARD ON 22/01/2007, ALONG WITH CMA NO. 96 OF 2000 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.7946/1998 IN C.M.A.NO.317 OF 1998

DISMISSED

22-1-2007 SD/- KURIAN JOSEPH, JUDGE.

SD/- K.PADMANABHAN NAIR, JUDGE.

/ TRUE COPY /

KURIAN JOSEPH & K.PADMANABHAN NAIR, JJ.

C.M.A.No.317 OF 1998 &
C.M.A.No.96 of 2000

Dated this the 22nd day of January, 2007

JUDGMENT

Kurian Joseph,J.

The former appeal arises from the order dated 10-11-1998 in I.A.No.2773 of 1998 in O.S.No.314/1994 on the file of the Sub Court, Thrissur. As per the said order a Receiver was appointed to manage the affairs of Kaliyarode Mosque and Jaram. This court by interim order dated 2-12-1998 in C.M.P.No.7946/1998 stayed the operation of the order under appeal. Subsequently the suit itself was dismissed for default. Therefore, practically the appeal, C.M.A.No.317/1998 has become infructuous. It is also to be noted that the appellant Sri.Avaran died on 14-2-2002 and the legal heirs are not impleaded in the appeal. On that ground also the appeal is liable to be dismissed.

2. C.M.A.No.96/2000 is filed against the order dated 25-1-2000 in I.A.No.4769/1999 in O.S.No.314/1994 on the file of the Subordinate Judge's court, Thrissur. The petitioners/plaintiffs 5 and 6 are the appellants. The suit was filed: (1) for removal of Avaran referred to above from the office of the Manager; (2) for framing a scheme; and (3) for rendition of accounts. The suit was dismissed for default on 13-9-1999. I.A.No. 4769/1999 was filed for restoration. The same was dismissed by order dated 25-1-2000. The appellants have impleaded the present Manager of the Jaram referred to above. In view of the intervening developments what actually survives is

only the relief regarding rendition of accounts since in the meanwhile a scheme has already been framed, Avaran is no more and the scheme thus framed is now subject matter of Wakf O.A.No.1/2004 on the file of the Wakf Tribunal, Ernakulam. The legal heirs of Avaran as such are not impleaded. For all the above reasons these appeals are liable to be dismissed. Parties agree that in view of the pendency of Wakf O.A.No.1/2004 on the file of the Wakf Tribunal, Ernakulamm this court need not go into all the disputed questions of fact and law involved in these appeals and the parties may be permitted to take up the surviving grievance, if any, in the pending proceedings before the Wakf Tribunal or other appropriate proceedings. Ordered accordingly and the appeals are dismissed.

(KURIAN JOSEPH, JUDGE)

(K.PADMANABHAN NAIR, JUDGE)

ahg.

KURIAN JOSEPH &
K.PADMANABHAN NAIR, JJ.

C.M.A.No.317 OF 1998 &
C.M.A.No.96 of 2000

JUDGMENT

22nd January, 2007